

**Introduced by Senator Yee**February 25, 2009

---

An act to add Article 9 (commencing with Section 17600) to Chapter 1 of Part 3 of Division 7 of the Business and Professions Code, relating to advertising.

## LEGISLATIVE COUNSEL'S DIGEST

SB 340, as introduced, Yee. Advertising: automatic renewal purchases.

Existing law prohibits any person with intent directly or indirectly to dispose of real or personal property or to perform services, professional or otherwise, or anything of any nature whatsoever or to induce the public to enter into any obligation relating thereto, from making or disseminating or causing to be made or disseminated before the public in this state, or in any state, any statement concerning that property or those services that is untrue or misleading, and that is known to be untrue or misleading, or for any person to make or disseminate or cause to be made or disseminated a statement as part of a plan or scheme with the intent not to sell that property or those services so advertised at the price stated. A violation of these provisions is a crime, punishable by specified penalties, and a violation of those provisions is subject to specified civil liability.

This bill would require all printed marketing materials containing an offer with automatic renewal offer terms, as defined, to have all automatic renewal offer terms appear on an order form in the immediate proximity to the area on the form at which the customer selects the subscription or purchasing agreement billing terms or where the subscription or purchasing agreement billing terms are described. The bill would require the order form to clearly and conspicuously disclose

that the customer is agreeing to an automatic renewal subscription or purchasing agreement. The bill would impose similar requirements for any automatic renewal offer made over the telephone or on an Internet Web page.

The bill would require, in any automatic renewal offer, a business to clearly and conspicuously state the automatic renewal offer terms and obtain the customer's affirmative consent to those terms before fulfilling any subscription or purchasing agreement on an automatic renewal basis. The bill would also require all marketing materials that offer an automatic renewal subscription or purchasing agreement to clearly and conspicuously display a toll-free telephone number the customer could use for cancellation.

The bill would also prohibit a business from representing a product as free if the cost of the product is incorporated into the price of the accompanying item to be purchased under automatic renewal conditions.

A violation of these provisions would not be a crime, but would be subject to enforcement by any available civil remedies.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Article 9 (commencing with Section 17600) is  
2 added to Chapter 1 of Part 3 of Division 7 of the Business and  
3 Professions Code, to read:

4  
5 Article 9. Automatic Purchase Renewals

6  
7 17600. It is the intent of the Legislature to end the practice of  
8 charging consumer credit cards without their explicit consent for  
9 ongoing shipments of a product or ongoing deliveries of service.

10 17601. For the purposes of this title:

11 (a) "Automatic renewal" means a plan or arrangement in which  
12 a subscription or purchasing agreement is automatically renewed  
13 at the end of a definite term for a subsequent term.

14 (b) "Automatic renewal offer terms" means the following clear  
15 and conspicuous disclosures:

16 (1) That the subscription or purchasing agreement will continue  
17 unless the customer notifies the business to stop.

18 (2) That the customer may cancel at any time.

1 (3) That the customer will be billed, credit card charged, or  
2 other appropriate description of the payment method depending  
3 on the method described to the customer, or chosen by the customer  
4 on the front of the order form, and that the bill, charge, or other  
5 payment method will take place before the start of each new  
6 automatic renewal term.

7 (4) The length of the automatic renewal term, unless the length  
8 of the term is disclosed or chosen by the customer on the order  
9 form.

10 (5) That the price paid by the customer for future automatic  
11 renewal terms may change over time.

12 (6) The minimum purchase obligation, if there is one.

13 (7) All other material terms and conditions of the automatic  
14 renewal feature, if any.

15 (c) “Clear and conspicuous” or “clearly and conspicuously”  
16 means a statement or communication, written or oral, presented  
17 in a font, size, color, location, and contrast against the background  
18 in which it appears, compared to the other matter with which it is  
19 presented, so that it is readily understandable, noticeable, and  
20 readable. If that statement or communication modifies, explains,  
21 or clarifies other information with which it is presented, it must  
22 be presented so that it is in close proximity to the other information  
23 and in the same manner (audible or visible) so it is easily noticeable  
24 and readily understandable and it must not be obscured in any  
25 manner. With respect to any promotional materials communicated  
26 through any nonprint medium, including such formats as telephone,  
27 television, radio, CD-ROM, DVD, other electronic, magnetic, or  
28 interactive media, audio disclosures shall be delivered in a volume  
29 and cadence sufficient to be readily audible and understandable.

30 (d) “Customer” means a person who responds to and accepts  
31 an offer or portion or features of an offer.

32 (e) “Marketing materials” include any offer, solicitation, script,  
33 product description, publication, or other promotional materials,  
34 renewal notice, purchase order device, fulfillment material, or any  
35 agreement for the sale or trial viewing of products that are delivered  
36 by mail, in person, television or radio broadcast, e-mail, Internet,  
37 Internet Web page, or telephone or other telecommunication device,  
38 or appearing in any newspaper or magazine or on any insert thereto,  
39 or Internet Web page, Internet link or pop-up window.

1 17602. All printed marketing materials containing an offer  
2 with an automatic renewal term shall comply with the following:

3 (a) The customer's agreement to the automatic renewal offer  
4 terms shall be obtained in accordance with either paragraph (1) or  
5 (2) so that the customer is given the opportunity to expressly  
6 consent to the offer.

7 (1) All automatic renewal offer terms shall appear on the order  
8 form in immediate proximity to the area on the form at which the  
9 customer selects the subscription or purchasing agreement billing  
10 terms or where the subscription or purchasing agreement billing  
11 terms are described and the order form shall clearly and  
12 conspicuously disclose that the customer is agreeing to an  
13 automatic renewal subscription or purchasing agreement. The  
14 automatic renewal offer terms shall also appear on materials that  
15 can be retained by the customer.

16 (2) All of the following:

17 (A) On the front of the order form, the marketing materials shall  
18 (i) refer to the subscription or purchasing agreement using the term  
19 "automatic renewal," (ii) clearly and conspicuously state that the  
20 customer is agreeing to the automatic renewal, and (iii) specify  
21 where the full terms of the automatic renewal offer may be found.

22 (B) The marketing materials shall clearly and conspicuously  
23 state the automatic renewal offer terms on the first page or front  
24 side of the document in which they are placed, presented together  
25 preceded by a title identifying them specifically as the "Automatic  
26 Renewal Terms," "Automatic Renewal Conditions," "Automatic  
27 Renewal Obligations," or other description of similar import.  
28 However, the automatic renewal offer terms may appear on the  
29 reverse side of the order form if all of the following conditions are  
30 met:

31 (i) The subscription or purchasing agreement is being offered  
32 to the customer as part of a bundled offer from a bank on an  
33 application form for a new credit card.

34 (ii) All or substantially all of the terms of the credit card  
35 application are presented on the reverse of the application form.

36 (iii) On the front of the application is a clear and conspicuous  
37 statement indicating that the customer has read and is agreeing to  
38 the terms of an "automatic renewal" subscription or purchasing  
39 agreement and that statement is in immediate proximity to both  
40 an affirmative action required by the customer, such as a signature

1 or the checking of an unchecked box and a clear and conspicuous  
2 statement directing the customer to the automatic renewal offer  
3 terms on the back of the application form.

4 (iv) The affirmative action required by clause (iii) of this  
5 subparagraph shall be in addition to the action taken by the  
6 customer indicating acceptance of the credit card application terms.

7 (v) The automatic renewal offer terms are presented together  
8 preceded by a title identifying them as the “Automatic Renewal  
9 Terms,” “Automatic Renewal,” “Automatic Renewal Obligations,”  
10 or other description of similar import and are presented in a manner  
11 that conspicuously sets them apart from the credit card terms.

12 (vi) When taken as a whole, the offer effectively conveys to a  
13 consumer that he or she is obtaining a product or service for which  
14 he or she may incur charges, and that the product or service is  
15 subject to automatic renewal.

16 (b) In addition to the requirements of subdivision (a) above, all  
17 marketing materials that offer an automatic renewal, when viewed  
18 as a whole, shall clearly and conspicuously disclose the material  
19 terms of the automatic renewal offer and shall not misrepresent  
20 the material terms of the offer.

21 (c) In addition to the requirements of subdivisions (a) and (b)  
22 above, all marketing materials that offer an automatic renewal  
23 shall clearly and conspicuously describe the methods by which  
24 the customer may cancel, including, but not limited to, a toll-free  
25 telephone number and shall include in all marketing materials the  
26 toll-free telephone number that may be used for cancellation.

27 17603. In any automatic renewal offer made over the telephone,  
28 a business shall clearly and conspicuously state the automatic  
29 renewal offer terms prior to obtaining a customer’s consent and  
30 payment information. The business shall obtain a clear affirmative  
31 statement from the customer agreeing to the automatic renewal  
32 offer terms after they have been stated to the customer. The  
33 business shall send a written acknowledgment to any customer  
34 who accepts an automatic renewal offer over the telephone, and  
35 that acknowledgment shall contain the toll-free telephone number  
36 for cancellation. An offer consisting of printed material that directs  
37 the customer to a telephone number as the method of ordering  
38 shall be considered an offer made over the telephone for purposes  
39 of this title provided that, if the printed material contains all of the

1 automatic renewal offer terms, the business shall not be required  
2 to send a written acknowledgment to customers of such an offer.

3 17604. In any automatic renewal offer made on an Internet  
4 Web page, the business shall clearly and conspicuously disclose  
5 the automatic renewal offer terms prior to the button or icon on  
6 which the customer must click to submit the order (the submit  
7 button). In addition, in any automatic renewal offer made on an  
8 Internet Web page on which the automatic renewal offer terms do  
9 not appear immediately above the submit button, the customer  
10 shall be required to affirmatively consent to the automatic renewal  
11 offer terms, such as by clicking “OK,” checking an unchecked  
12 box, or otherwise taking an affirmative action immediately adjacent  
13 to the automatic renewal offer terms before the customer submits  
14 the order. The automatic renewal offer terms shall be preceded by  
15 a title identifying them as the “Automatic Renewal Terms,”  
16 “Automatic Renewal Conditions,” “Automatic Renewal  
17 Obligations,” or other description of similar import. An offer  
18 consisting of printed material that directs the customer to an  
19 Internet Web page as the method of ordering shall be considered  
20 an offer made on an Internet Web page for purposes of this title.

21 17605. In any automatic renewal offer, a business shall clearly  
22 and conspicuously state the automatic renewal offer terms and  
23 obtain the customer’s affirmative consent to those terms before  
24 fulfilling any subscription or purchasing agreement on an automatic  
25 renewal basis. In addition, all marketing materials that offer an  
26 automatic renewal subscription or purchasing agreement shall  
27 clearly and conspicuously display a toll-free telephone number the  
28 customer may use for cancellation.

29 17606. No business shall represent that a product is “free” if  
30 the cost of the product is incorporated into the price of the  
31 accompanying item to be purchased under automatic renewal  
32 conditions.

33 17607. Notwithstanding Section 17534, a violation of this  
34 article shall not be a crime. However, all available civil remedies  
35 that are applicable to a violation of this article may be employed.